IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12802 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

CHATURBHAI M PATEL C/O JS BRAHAMBHATT

Appearance:

1. Special Civil Application No. 12802 of 2000

MR HS MUNSHAW for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/10/2001

ORAL JUDGEMENT

#. Rule. Mr.Brahmbhatt waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The respondent workman was serving as conductor at the relevant time. While he was on duty, it was found that he has not issued tickets to certain passengers. Ultimately, he was subjected to the departmental proceedings and after the inquiry proceedings were over, he was awarded the punishment of withholding of five increments with future effect. Against that order, the respondent has filed departmental appeal which was dismissed. He, thereafter, preferred second appeal before the department and the same was partly allowed by the department and instead of the penalty of withholding of five increments with future effect, the penalty of withholding of three increments with future effect was imposed. However, the respondent was not satisfied even with that order, therefore, he raised industrial dispute which was referred to the Industrial Tribunal, Ahmedabad. The said dispute was numbered as Reference (IT) No.258 of 1994. The Industrial Tribunal, Ahmedabad allowed the said reference and set aside the aforesaid penalty of withholding of three increments with future effect. The said award is challenged by the Corporation.

#. At the time of hearing, it was argued by Mr.Munshaw that the inquiry was validly held against the concerned workman, and, therefore, the concerned workman should not have been allowed to go scot free. He submitted that, in any case, the Tribunal should have given the opportunity to the petitioner - Corporation to lead the evidence before the Tribunal.

#. On the other-hand Mr.Brahmbhatt, learned advocate for the respondent workman has fairly submitted that he has no objection if the order of the Tribunal is modified and in the facts and circumstances of the case, appropriate order of punishment is passed against the respondent workman.

#. The Tribunal came to the conclusion, in para 12, that the disciplinary authority, after considering the evidence on record, has come to the conclusion that the respondent workman was guilty of the aforesaid misconduct of non-issuance of tickets. However, ultimately the Tribunal set aside the order of penalty on the ground that the concerned workman was not given the report of the inquiry officer along with the show cause notice.

#. It is required to be noted that in the departmental proceedings, the aforesaid misconduct of non-issuance of tickets has already been proved against the respondent workman. The appellate authority of the Corporation

itself had imposed the penalty of withholding of three increments with future effect which was set aside by the Industrial Tribunal. Considering the totality of the facts and considering the consent given by Mr.Brahmbhatt, in my view, the concerned workman should not have been allowed to go scot free and some penalty was required to be imposed on the concerned workman with a view to see that there may be some deterrent effect and in future, he may not attempt to repeat such misconduct again. In the facts and circumstances of the case, therefore, I set aside the order of the Industrial Tribunal and the order of penalty of withholding of two increments with future effect is required to be passed against the respondent workman. Accordingly, the respondent workman will be subjected to the penalty of withholding of two increments with future effect. In short, the order passed by the appellate authority of the Corporation is also modified to the extent that, instead of withholding of three increments with future effect, the respondent workman will be subjected to the penalty of withholding of two increments with future effect. It is clarified that, whatever benefit the respondent workman is entitled in view of the aforesaid order, the corporation may give the said benefit to the respondent workman within a period of four weeks from today. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)